

cc: Richard [unclear] [unclear] [unclear]
Steve & Linda

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IN THE MATTER OF:

TELEPHONE AND DATA SYSTEMS, INC./
WISCONSIN RSA No. 8, INC./
UNITED STATES CELLULAR OPERATING COMPANY

DOCKET FILE COPY ORIGINAL

VOLUME: 4

PAGES: 242 - 374

FREE STATE REPORTING, INC.
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D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

-----)	
In re Application of)	
TELEPHONE AND DATA SYSTEMS, INC.)	CC DOCKET NO. 94-11
For facilities in the Domestic)	File No.
Public Cellular Telecommunications)	10209-CL-P-715-B-88
Radio Service on Frequency Block B,)	
in Market 715, Wisconsin 8 (Vernon),)	DOCKET FILE COPY ORIGINAL
Rural Service Area)	
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The above-entitled matter came on for admissions session pursuant to notice before Judge Gonzalez, at 2000 L Street, N.W., Courtroom 4, Washington, D.C., on Tuesday, March 8, 1995 at 9:30 a.m.

APPEARANCES:

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11 Telephone Company, LaValle Telephone Cooperative, Monroe
12 County Telephone Company, Mount Horeb Telephone Company,
13 North-West Cellular, Inc., Richland-Grant Telephone
14 Cooperative, Inc., Vernon Telephone Cooperative, and Viroqua
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Pro se

On behalf of Wireless Telecommunications Bureau:

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I N D E X

	<u>TDS/USCC</u>	<u>Identified</u>	<u>Received</u>	<u>Withdrawn</u>
1				
2				
3	Exhibit 8	250	252	
4	Exhibit 9	253	257	
	Exhibit 10	258		274
5	Exhibit 11	275	286	
	Exhibit 12	287	287	
6	Exhibit 13	287	291	
	Exhibit 14	294	294	
7	Exhibit 15	294	295	
	Exhibit 16	295	295	
8	Exhibit 17	296	296	
	Exhibit 18	296	297	
9				
10	<u>BUREAU</u>			
11	Exhibit 1			297
	Exhibit 2	298		298
12	Exhibit 3			299
	Exhibit 4			299
13	Exhibit 5			299
	Exhibit 6			299
14	Exhibit 7			299
	Exhibit 8			299
15	Exhibit 9			299
	Exhibit 10			299
16	Exhibit 11			299
	Exhibit 12			299
17	Exhibit 13	299	300	
	Exhibit 14	300	300	
18	Exhibit 15	admitted through	TDS's direct case	
	Exhibit 16	301	301	
19	Exhibit 17	302	302	
	Exhibit 18	302	302	
20	Exhibit 19	303		304
	Exhibit 20	304	304	
21	Exhibit 21	305	305	
	Exhibit 22			305
22	Exhibit 23			305
	Exhibit 24	306	306	
23	Exhibit 25	306	306	
	Exhibit 26	307	307	
24	Exhibit 27	307	308	
	Exhibit 28	admitted through	TDS's direct case	
25	Exhibit 29	admitted through	TDS's direct case	

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	<u>BUREAU</u> - cont.	<u>Identified</u>	<u>Received</u>	<u>Withdrawn</u>
1				
2	Exhibit 30	308	309	
	Exhibit 31	309	309	
3	Exhibit 32	admitted through	TDS's direct case	
	Exhibit 33	310	310	
4	Exhibit 34	admitted through	TDS's direct case	
	Exhibit 35	310	311	
5	Exhibit 36	admitted through	TDS's direct case	
	Exhibit 37	311	311	
6	Exhibit 38	312	312	
	Exhibit 39	312	313	
7	Exhibit 40	313	313	
	Exhibit 41	313	314	
8	Exhibit 42	314	315	
	Exhibit 43	315	315	
9	Exhibit 44	admitted through	TDS's direct case	
	Exhibit 45	316	316	
10	Exhibit 46	316	317	
	Exhibit 47	317	317	
11	Exhibit 48	318	318	
	Exhibit 49	admitted through	TDS's direct case	
12	Exhibit 50	318	320	
	Exhibit 51	321	321	
13	Exhibit 52	admitted through	TDS's direct case	
	Exhibit 53	321	322	
14	Exhibit 54	322	323	
	Exhibit 55	admitted through	TDS's direct case	
15	Exhibit 56	admitted through	TDS's direct case	
	Exhibit 57	admitted through	TDS's direct case	
16	Exhibit 58	323	324	
	Exhibit 59	324	324	
17	Exhibit 60	324	325	
	Exhibit 61	admitted through	TDS's direct case	
18	Exhibit 62	325	325	
	Exhibit 63	admitted through	TDS's direct case	
19	Exhibit 64	326	326	
	Exhibit 65	327	327	
20	Exhibit 66	328	328	
	Exhibit 67	admitted through	TDS's direct case	
21	Exhibit 68	329	329	
	Exhibit 69	329	330	
22	Exhibit 70	330	331	
	Exhibit 71	331	331	
23	Exhibit 72	admitted through	TDS's direct case	
	Exhibit 73	332	333	
24	Exhibit 74	admitted through	TDS's direct case	
	Exhibit 75	343	344	
25	Exhibit 76	344	344	

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 Court Reporting Depositions
 D.C. Area (301) 261-1902
 Balt. & Annap. (410) 974-0947

1	<u>BUREAU</u> - cont.	<u>Identified</u>	<u>Received</u>	<u>Withdrawn</u>
2	Exhibit 77	345	345	
	Exhibit 78	345	346	
3	Exhibit 79	admitted through TDS's direct case		
	Exhibit 80	346	346	
4				
5	<u>GRP-01</u>	<u>Identified</u>	<u>Received</u>	<u>Withdrawn</u>
6	Exhibit 1	348		348
	Exhibit 2	not identified		
7	Exhibit 3	not identified		
	Exhibit 4	not identified		
8	Exhibit 5	350		350
	Exhibit 6	351		
9	Exhibit 7	352		
	Exhibit 8	352		
10	Exhibit 9	353		
	Exhibit 10	353		
11	Exhibit 11	353		
	Exhibit 12	354		
12	Exhibit 13	354		
	Exhibit 14	355		
13	Exhibit 15	355		
	Exhibit 16	369		371
14				
15	<u>BUREAU/TDS-USCC</u> - joint	<u>Identified</u>	<u>Received</u>	<u>Withdrawn</u>
16	Exhibit 1	372	372	
17				
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25	Hearing Began: 10:05 a.m.		Hearing Ended: 2:45 p.m.	

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P R O C E E D I N G S

JUDGE GONZALEZ: I guess we'll continue where we left off.

MR. EMMONS: Thank you, Your Honor. Next, I would ask that there be identified TDS-USCC Exhibit 8, which is the written testimony of Mark A. Krohse, K R O H S E. The testimony consists of fourteen pages of text plus a covering declaration and includes tabs A through S, as in Sam. Tab A is a compilation of materials, the first page of which is a letter dated December 9, 1987 and the total exhibit is twenty one pages. Tab B is a one page exhibit, memorandum, dated September 28, 1987.

JUDGE GONZALEZ: All right.

MR. EMMONS: Tab C is a two page exhibit of handwritten notes.

JUDGE GONZALEZ: All right.

MR. EMMONS: Tab D is a forty one page exhibit consisting of a, what I will call a budget printout.

JUDGE GONZALEZ: All right.

MR. EMMONS: Tab E is a five page exhibit, the first page of which is a letter dated September 8, 1987 and the ensuing pages which are related to the letter.

JUDGE GONZALEZ: All right.

MR. EMMONS: Tab F is a five page exhibit, the first page of which is a letter of October 8, 1987 and the ensuing

1 pages of which are related to that letter.

2 JUDGE GONZALEZ: All right.

3 MR. EMMONS: Tab G is a one page exhibit, being a
4 memorandum dated February 19, 1988.

5 JUDGE GONZALEZ: All right.

6 MR. EMMONS: Tab H is a one page exhibit being a
7 letter dated March 9, 1988.

8 JUDGE GONZALEZ: All right.

9 MR. EMMONS: Tab I is a four page exhibit of
10 materials relating to tax returns.

11 JUDGE GONZALEZ: All right.

12 MR. EMMONS: Tab J is a three page exhibit of
13 additional materials relating to tax returns. Tab K is a two
14 page exhibit of Bill Fritter, materials relating to tax
15 returns.

16 JUDGE GONZALEZ: All right.

17 MR. EMMONS: Tab L is the deposition testimony of
18 Mr. Krohse in July 1990 in the LaStar proceeding, totaling 81
19 pages.

20 JUDGE GONZALEZ: All right.

21 MR. EMMONS: Tab M is a one page memorandum dated
22 July 19, 1990.

23 JUDGE GONZALEZ: All right.

24 MR. EMMONS: Tab M is a declaration of Mark Krohse
25 dated August 13, 1990, one page.

1 JUDGE GONZALEZ: All right.

2 MR. EMMONS: Tab O is LaStar Exhibit 18, consisting
3 of three pages which includes the cover page.

4 JUDGE GONZALEZ: All right.

5 MR. EMMONS: Tab P is a twenty nine page exhibit,
6 the first page of which is a letter dated August 29, 1990 and
7 the remainder of which are materials related to that letter.

8 JUDGE GONZALEZ: Okay.

9 MR. EMMONS: Tab Q is LaStar Exhibit 10, a document
10 of six pages, which includes the cover page.

11 JUDGE GONZALEZ: All right.

12 MR. EMMONS: Tab R is the hearing testimony, oral
13 testimony, of Mr. Krohse in the LaStar hearing in January 1991
14 and the exhibit totals 82 pages.

15 JUDGE GONZALEZ: All right.

16 MR. EMMONS: May I confer with counsel for a moment,
17 Your Honor?

18 JUDGE GONZALEZ: Surely.

19 MR. EMMONS: Tab S, Your Honor, is the 38 page
20 exhibit consisting of various materials, apparently the --
21 itself cites the first page of the exhibit is a letter dated
22 sometime September 1987.

23 JUDGE GONZALEZ: All right.

24 MR. EMMONS: Before moving these into evidence, Your
25 Honor, we note that we have submitted to Your Honor and to all

1 other parties, I believe, the revised version of this volume
2 of exhibits pursuant to the report that Mr. Schneider made on
3 the record yesterday that all this does is to include some
4 pages of transcript in a couple of the pads that had
5 inadvertently been omitted from the volume as originally
6 exchanged and while I don't have the numbers where those
7 appear right now, there may be one or two places in the -- in
8 Tab L and/or Tab R where the pagination includes some letters
9 pages as well as the numbered pages.

10 MR. WEBER: I have the pages if you want them.

11 MR. EMMONS: That would be -- that would be helpful.

12 MR. WEBER: If -- if you look to the -- what was the
13 deposition, the original deposition pages, as opposed to your
14 pagination in Tab L, it's pages 26, 44, 46, 50 and 72.

15 MR. EMMONS: Very well, thank you, Mr. Weber. With
16 that, Your Honor, TDS U.S. Cellular, would offer TDS-USCC
17 Exhibit 8 into evidence.

18 JUDGE GONZALEZ: All right, well, the document,
19 proposed Exhibit A as identified by counsel and Tabs A through
20 --

21 MR. EMMONS: S.

22 JUDGE GONZALEZ: -- S is identified and I will now
23 entertain any objections to its receipt.

24 (Whereupon, the document referred to as
25 TDS-USCC Exhibit No. 8 was marked for

1 identification.)

2 MR. WEBER: Yes, Your Honor, I have a few
3 objections. I would start with paragraph 5, in the last
4 sentence, I believe this is just a typographical error but I
5 would move to strike the word million after the number
6 2,460,000 because I don't think the purchase price was two
7 million.

8 MR. EMMONS: Your Honor, a well taken observation
9 and we will withdraw the word million in that sentence.

10 JUDGE GONZALEZ: All right, I don't think we'll have
11 any trouble with the witness agreeing to that. All right,
12 note is taken and we'll -- we'll remove that.

13 MR. EMMONS: I thank counsel for noticing that, by
14 the way.

15 JUDGE GONZALEZ: Any further, Mr. Weber?

16 MR. WEBER: Yes, I'd also move to strike paragraph
17 12 as irrelevant.

18 JUDGE GONZALEZ: The entire paragraph?

19 MR. WEBER: The entire paragraph. The paragraph
20 discusses all the tax issues and there's nothing to go with
21 particulars which questions Mr. Krohse's having --

22 JUDGE GONZALEZ: All right, can I just have a minute
23 to read the paragraph.

24 MR. EMMONS: Your Honor, should I respond to that
25 now or --

1 JUDGE GONZALEZ: All right.

2 MR. EMMONS: Your Honor, the -- I think the Bill of
3 Particulars does raise a question as to whether Mr. Krohse
4 fully disclosed in his statements to the commission in the
5 LaStar proceeding all of the activities that involved the
6 LaStar or were related to LaStar in which he was involved and
7 if that's an issue then it's necessary for Mr. Krohse to be
8 able to state what it was that he was involved in and what the
9 nature of that involvement was since that goes, of course, to
10 the veracity of his own statement about what his involvement
11 was and it goes to his understanding of what his involvement
12 was.

13 JUDGE GONZALEZ: Mr. Weber would -- respond?

14 MR. WEBER: I'll withdraw the objection.

15 MR. EMMONS: Thank you.

16 JUDGE GONZALEZ: All right, next objection.

17 MR. WEBER: I have no further objections to this
18 exhibit.

19 JUDGE GONZALEZ: Does anyone else? Mr. Hardman?

20 MR. HARDMAN: With the same understandings as
21 yesterday I have no further objection.

22 JUDGE GONZALEZ: All right, thank you, sir. All
23 right, then it having been offered, it is received this date,
24 along with the attached. At Exhibit 8.

25 (Whereupon, the document referred to as

1 TDS-USCC Exhibit No. 8 was received into
2 evidence.)

3 MR. EMMONS: All right, Your Honor, I would ask that
4 we identify the next -- regarding 6, Your Honor.

5 JUDGE GONZALEZ: All right. All right.

6 MR. EMMONS: I would ask that there be identified
7 TDS-USCC Exhibit 9 which is the direct written testimony of
8 Leroy T. Carlson, Sr., which consists of nine pages of written
9 text plus a cover and declaration and which includes two tabs,
10 Tab A and B. Tab A is a two page document or a three page
11 compilation consisting of handwritten notes and Tab B is a --
12 an eight page document of -- the first page of which is a
13 letter dated June 1, 1990, the remaining pages of which are
14 the copy of the hearing designation order in the LaStar case
15 with handwritten notations on it.

16 JUDGE GONZALEZ: All right, it's identified.

17 (Whereupon, the document referred to as
18 TDS-USCC Exhibit No. 9 was marked for
19 identification.)

20 MR. EMMONS: And at this point, Your Honor, then I
21 would move into evidence TDS-USCC Exhibit 9.

22 JUDGE GONZALEZ: Are there any objections?

23 MR. WEBER: Yes, Your Honor, I have an objection to
24 paragraph 14 of the written statement for individual relevant.

25 JUDGE GONZALEZ: Sir?

1 MR. EMMONS: Your Honor, I can't think of any
2 testimony that is more relevant in this case than the
3 testimony of the state of mind of the chairman of the company
4 whose licenses are at stake in this case. This paragraph of
5 testimony states Mr. Carlson's understanding about whether or
6 not statements submitted by his company to the commission were
7 candid and he states that basis of that understanding which
8 was essentially the advise and counsel that he was given to
9 him by his long time law firm, the firm of Toteen Naftalin
10 (phonetic sp.). The testimony cites that Toteen and Naftalin
11 never advised him that his company was exercising control over
12 LaStar, to the contrary it says that Mr. Naftalin advised him
13 that he viewed there was no exercise of control over LaStar.
14 He never had any contrary advise from LaStar's counsel who was
15 Mr. Belendiuk and at no time was he advised that any
16 statements had been submitted by his company in FCC
17 proceedings were uncandid or misleading so his state of mind
18 is directly at issue because his company's conduct is at issue
19 and this was his state of mind and this explains the basis for
20 it.

21 MR. WEBER: While this statement can certainly let
22 us get into the state of mind of Mr. Carlson, who is chairman
23 and the president of TDS-USCC, it does nothing to get into the
24 minds of the actual witnesses whose testimony is being
25 questioned in this proceeding. Mr. Carlson was not a witness

1 in the LaStar proceeding and no statement by Mr. Carlson has
2 been called into question in the Bill of Particulars. Now,
3 while he is the superior to some of those whose -- whose
4 comments have been called into question, this -- this doesn't
5 aide us into getting into their minds.

6 MR. HARDMAN: Your Honor --

7 JUDGE GONZALEZ: How does -- what is the nexus --
8 did you want to be heard too, Mr. Hardman?

9 MR. HARDMAN: Yes, Your Honor, and on this issue I
10 would like to side with the -- well, I wouldn't like to side
11 but I will side with TDS. Certainly the Settlement Group
12 believes that Mr. Carlson's state of mind in this whole matter
13 is very relevant and given his position as in -- and I don't
14 mean this in any pejorative sense but the man is the -- is TDS
15 and, so, his state of mind very definitely is relevant to the
16 issues that are in this case.

17 MR. EMMONS: Well, in light of what Mr. Hardman just
18 said, Your Honor, I wonder if I have to change my position.
19 (Laughter) But I'm not going to, Your Honor, but I do want to
20 respond to what Mr. Weber said --

21 JUDGE GONZALEZ: Go right ahead.

22 MR. EMMONS: -- was Mr. Carlson's state of mind --
23 that this testimony had nothing to do with the state of mind
24 of the U.S. Cellular people whose testimony or statements in
25 the LaStar proceeding are directly --

1 JUDGE GONZALEZ: Yeah, aren't you going to address -
2 -

3 MR. EMMONS: I'd like to address that.

4 JUDGE GONZALEZ: -- address what nexus might exist
5 between Carlson and the witnesses.

6 MR. EMMONS: Well, let me explain who Mr. Carlson is
7 first. Mr. Carlson is the chief executive officer and the
8 senior official of TDS. TDS is the parent company of U.S.
9 Cellular. It is not a 100% owner but it owns a majority of
10 the stock, the rest is publicly owned. The witnesses who Mr.
11 Weber has just referred to, who are Mr. Krohse, Mr. Goehring
12 and Mr. Nelson, I presume, are employees, not of TDS, but of
13 U.S. Cellular. Now, because TDS -- because qualifications of
14 TDS have been put into issue by the hearing designation order
15 it is not just the qualifications of U.S. Cellular --

16 JUDGE GONZALEZ: U.S. Cellular.

17 MR. EMMONS: -- but also TDS, it is essential to
18 make a determination that TDS was in good faith or we would
19 argue that they were and you would need to make that
20 determination of whether or not TDS, the parent company, was
21 in good faith because even assuming arguendo, and certainly
22 not conceding it, but assuming arguendo, if a finding were
23 made that employees of U.S. Cellular were not candid with the
24 commission, that does not resolve the issue then of whether
25 TDS may be found culpable and in order to make that

1 determination, Your Honor would have to make findings and draw
2 conclusions concerning the state of mind of the parent
3 company, TDS, and so, this testimony which goes to the state
4 of mind of TDS in the person of its chairman is directly
5 relevant to that issue and I think is essential for us to be
6 able to defend the qualifications of TDS in this hearing to
7 the extent that there is any difference between the
8 qualifications of TDS and U.S. Cellular.

9 JUDGE GONZALEZ: Yeah, I agree, I'll overrule the
10 objection. Any further objections?

11 MR. WEBER: I have none.

12 JUDGE GONZALEZ: All right.

13 MR. WEBER: So, I have no further objection.

14 JUDGE GONZALEZ: All right, not hearing any further
15 objections, I will receive the document which has been
16 identified as Exhibit Number 9 and -- with Tabs A and B.

17 (Whereupon, the document referred to as
18 TDS-USCC Exhibit No. 9 was received into
19 evidence.)

20 MR. EMMONS: Next, Your Honor, I would ask that
21 there be identified --

22 JUDGE GONZALEZ: One moment.

23 MR. EMMONS: Well, no, in the same volume, Your
24 Honor.

25 JUDGE GONZALEZ: Oh, it's the same volume?

1 MR. EMMONS: Yeah, we're in volume --

2 JUDGE GONZALEZ: Oh, that's right, I see.

3 MR. EMMONS: -- volume 6, Your Honor.

4 JUDGE GONZALEZ: Okay.

5 MR. EMMONS: I will ask that there be identified
6 TDS-USCC Exhibit 10, which is the direct written testimony of
7 Herbert D. Miller, Jr. The testimony -- the text of the
8 testimony totals thirty eight pages and there's a covering
9 page declaration and the exhibit also includes one exhibit
10 which is Tab A, an exhibit of 66 pages, which is a copy of the
11 so-called petition to delete footnote 3.

12 JUDGE GONZALEZ: All right, it's identified with the
13 Tab A. I guess you move it into evidence?

14 (Whereupon, the document referred to as
15 TDS-USCC Exhibit No. 10 was marked for
16 identification.)

17 MR. EMMONS: Oh, I'm sorry, yes, I do, Your Honor.

18 JUDGE GONZALEZ: Now, are there any objections in
19 receipt of any portion of this proposed exhibit?

20 MR. HARDMAN: Your Honor, if I may go first on this
21 one --

22 JUDGE GONZALEZ: All right.

23 MR. HARDMAN: -- because I'd like to frame my
24 objection somewhat broader than the we've normally been
25 dealing with this and I recognize this may be a little bit

1 unfair to Your Honor to phrase my objection this way but the
2 basic objection is that this lengthy exhibit, while there may
3 be snippets here and there that would have some relevant and
4 probative evidence is so pervasively just reargument of -- of
5 TDS's position both on the findings and conclusion before the
6 Administrative Law Judge on various reconsiderations in the
7 petition for deletion of footnote 3 and if we just pass the
8 background, the preliminary material and we start on page 4,
9 paragraph 7, basically what this prospective witness does is
10 go through, you know, all of the -- the testimony, the
11 challenged testimony of all the -- USCC witnesses and attempt
12 to attest that he didn't think there was anything misleading
13 or lacking of candor about what they did and if you go through
14 the pages after that, it just reads like, you know, this --
15 this petition to delete footnote 3 is just purely argument on
16 the part of counsel that evidently was involved in drafting
17 the various documents but it has absolutely no probative value
18 on -- in -- on the state of mind of the witness whose
19 testimony he purports to be analyzing and I just think the
20 entire exhibit is so -- whatever value it has is so limited
21 that it is far outweighed by the objectionable thrust of the
22 testimony and I just don't think it ought to be let in at all.

23 JUDGE GONZALEZ: All right, Mr. Weber.

24 MR. WEBER: The Bureau does not object to or oppose
25 Mr. Hardman's objection here. If it is determined that the

1 entire document should not or the entire statement should not
2 be stricken, the Bureau will certainly have objections to very
3 large portions of this exhibit and so if it is determined that
4 some of it may have probative value we can go through -- well,
5 line by line like we have with some of the previous documents
6 and the Bureau will -- can propose its objection to that point
7 but there are very significant portions of this the Bureau
8 does not believe --

9 JUDGE GONZALEZ: And are your objections pretty much
10 the same as Mr. Hardman's, in effect it's just an attempt to
11 reargue or it's --

12 MR. WEBER: Yes.

13 JUDGE GONZALEZ: -- just a statement of previous
14 argument?

15 MR. WEBER: If it's all a statement of Mr. Miller's
16 state of mind and that -- so, there's no probative value.

17 JUDGE GONZALEZ: Mr. --

18 MR. EMMONS: Let me respond first by saying, Your
19 Honor, that what Mr. Weber just said in his last sentence is
20 half correct. It is a statement of Mr. Miller's state of mind
21 -- by the way, Mr. Miller is an attorney at Toteen and
22 Naftalin. Toteen and Naftalin was the law firm that
23 represented United States Cellular in the LaStar proceeding to
24 the extent that United States Cellular was a party and had
25 witnesses in that proceeding. So, we are talking here, not

1 about LaStar's attorney, but about TDS and U.S. Cellular's
2 attorney, and they're long time attorneys who have been their
3 attorneys for years before this case came up and have been
4 their attorneys since then. And the -- Mr. Carlson, in his
5 testimony which has just been admitted, stated that he relied
6 completely on the integrity and the judgement of Toteen and
7 Naftalin, who had represented him for many years, and that his
8 -- that he was confident that submission to the commission
9 were truthful and candid because he knew that Toteen and
10 Naftalin had reviewed those submissions. In effect, Mr.
11 Carlson, made for TDS, his law firm, Toteen and Naftalin, the
12 agents of that company for purposes of these submission to the
13 commission. The statements, I think, to which Mr. Hardman
14 was alluding and Mr. Weber as well, are all statements that
15 were either reviewed by Toteen and Naftalin before they were
16 submitted by the U.S. Cellular witnesses or more directly were
17 actually drafted by Toteen and Naftalin and one of them, the
18 so-called petition to delete footnote 3, was not a statement
19 of evidence in the proceeding given by any of the witnesses,
20 it was a pleading submitted -- drafted by Toteen and Naftalin
21 after the hearing was over and after the commission decision
22 had come out, it was a pleading to the commission asking for
23 certain relief from the commission based upon the analysis
24 stated in the pleading of what the evidence in the proceeding
25 had shown. And -- and the -- Toteen and Naftalin were the

1 drafts people, principally Mr. Miller, was the principal
2 draftsman of that pleading and since Mr. Carlson made that law
3 firm his agent for purposes of those submissions to the
4 commission, the good faith and candor of those agents is
5 necessarily at issue in this case. I think, Your Honor,
6 recognized yesterday as we were discussing that under
7 commission law if counsel for an applicant or a licensee are
8 found to have engaged in misconduct that can, not necessarily,
9 but can be attributed to the principals, the licensee or the
10 applicant and this testimony which is submitted, not to
11 reargument anything, I mean we are perfectly capable of making
12 arguments, I mean our proposed findings and conclusions, we
13 don't need to rely on Mr. Miller in testimony to make
14 arguments for us but this testimony is not submitted for the
15 purpose of rearguing anything and both Mr. Schneider, on
16 behalf of U.S. Cellular, and I will add what he has said
17 yesterday many times, that we have no intention of rearguing
18 the control issue in the LaStar proceeding. We have no
19 intention of that at all. But I think it is essential that
20 the record of this proceeding, which is a candid proceeding,
21 have in it the state of mind of the people whom the company
22 was relying on to insure that what was submitted to the
23 commission was candid and accurate and truthful so far as they
24 were concerned and we can go through it paragraph by paragraph
25 if we have to, but that --

1 JUDGE GONZALEZ: Well, my suggestion would be --
2 apparently the objections seem to be objected more towards the
3 fact that there's a lot of material contained in the
4 declaration which is not pertinent. I would agree with that.
5 I think the general statement -- state of mind of the attorney
6 working for TDS is of some significance. However, I wonder
7 whether it's necessary to restate argument? Would it not be
8 simple enough or could we -- to just have him indicate what
9 his state of mind was in preparing these documents without
10 having to rehash the argument, which I gather is the
11 objection.

12 MR. HARDMAN: May I just -- before Mr. Schneider
13 objects, could I just say this. That basically what the
14 prospective witness is saying as, who is an attorney, is that
15 his behavior was ethical and in good faith.

16 JUDGE GONZALEZ: Right.

17 MR. HARDMAN: In doing his work.

18 JUDGE GONZALEZ: Right.

19 MR. HARDMAN: And there's no suggestion that I'm
20 aware of in this case that his conduct has been brought into
21 question.

22 JUDGE GONZALEZ: Well, that's what I was wondering,
23 couldn't it just -- the statement limit itself to that. I
24 mean I don't know why we have to go back through argument
25 which is -- and I can understand the concern that the Bureau

1 has as well as Mr. Hardman that the exhibit may be
2 unnecessarily long to convey really the point that you're
3 trying to make, which I think was just very briefly summarized
4 by Mr. Hardman.

5 MR. SCHNEIDER: Your Honor, I --

6 JUDGE GONZALEZ: I mean Mr. Miller's a well known
7 attorney, he's practiced here before us for many years. I
8 think a statement to that effect would perhaps meet your --
9 meet your purposes.

10 MR. SCHNEIDER: Your Honor, I have two statements
11 about that. One, in point of fact, the Bill of Particulars
12 quoted for some six pages various statements in the pleading
13 drafted by Mr. Miller, it seems unfair to chastise but I
14 wouldn't he's being chastised but to question Mr. Miller's
15 submission for detailed explanation of statements drafted by
16 him and interpretations of statements interpreted by him in
17 the Bill of Particulars in the petition to delete footnote 3,
18 when that pleading is quoted in the Bill of Particulars for
19 some six pages. Additionally, I think that if you read --
20 there may be some statements or paragraphs in this declaration
21 which are objectionable and the Bureau said there were a
22 number of them. I won't know that until I go -- unfortunately
23 I go through each paragraph and listen to the argument, but
24 I've turned to one page or two pages and I don't see him
25 rearguing the case in LaStar. What I see him trying to do is

1 explain -- he does not -- he -- the Bill of Particulars and
2 statement quoted in the Bill of Particulars that were either
3 drafted by him in the petition to delete footnote 3 or
4 statements he reviewed and discussed at length in the Bill of
5 Particulars -- in the petition to delete footnote 3 and
6 explained in some cases why he used certain words, why he
7 didn't use certain words --

8 JUDGE GONZALEZ: All right, well, if I may just
9 interrupt. Why would that not be fair, Mr. Weber, for Mr.
10 Miller to specifically explain each portion of those documents
11 which you are addressing in your Bill of Particulars?

12 MR. WEBER: I think that has a fairly simple answer
13 and in this proceeding there will be evidence which will show
14 that Mr. Carlson, Mr. Nelson, Mr. Goehring and Mr. Krohse all
15 reviewed the petition to delete footnote 3 prior to it being
16 filed and therefore it's their candor that's being questioned
17 and they have the chance to review a document which is being
18 questioned in the Bill of Particulars. It's their state of
19 mind in allowing that petition to be filed that has brought
20 into question the Bill of Particulars. I don't see any
21 connection between what Mr. Miller thought when he used a
22 particular word and if Mr. Nelson necessarily held that same
23 view.

24 JUDGE GONZALEZ: All right, but if you find that --
25 if you find that there's some merit to the argument that a